

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 3175 – SB 3018

March 12, 2012

SUMMARY OF AMENDMENTS (013664, 013988): Deletes all language after the enacting clause. Amendment 013664 provides that most current statutory provisions regarding controlled substances would also apply to controlled substance analogues. Defines “controlled substance analogue” as a capsule, pill, powder, product, or other substance with a chemical structure that is a derivative of, or substantially similar to, the chemical structure of a controlled substance; or has a stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance. Lists the factors that must be considered in determining whether a substance is a controlled substance analogue as well as the scientific or pharmacological factors that may be considered.

Creates a new Class D felony offense for a person to knowingly manufacture, deliver, dispense, or sell a controlled substance analogue, or to possess a controlled substance analogue with the intent to manufacture, deliver, dispense, or sell such substance. Elevates a second or subsequent violation to a Class C felony. If the violation involved the delivery, dispensing, or sale of a controlled substance analogue to a minor, the offender will be punished one classification higher than the punishment for delivering, dispensing, or selling to an adult. Creates a new Class A misdemeanor offense for a person to knowingly possess or casually exchange a small amount of a controlled substance analogue not in excess of one gram; or for a person to represent, advertise, infer, or intend that a controlled substance analogue is a derivative of, or substantially similar to, the chemical structure of a controlled substance or has the same effect as a controlled substance.

Elevates the offense, from a Class A misdemeanor to a Class D felony, for a person to knowingly produce, manufacture, distribute, possess, or to possess with intent to produce, manufacture, or distribute salvia divinorum A or certain enumerated synthetic cannabinoids. Elevates a second or subsequent violation to a Class C felony. If the violation involved the delivery, dispensing, or sale of a controlled substance analogue to a minor, the offender shall be punished one classification higher than the punishment for delivering, dispensing, or selling to an adult. Declares any building and premises of any business in or upon which a violation occurs to be a public nuisance and subject to abatement as provided in Tennessee Code Annotated Title 29, Chapter 3, Part 1.

Amendment 013988 removes controlled substance analogues from Tenn. Code Ann. § 50-9-106 which requires employers who are covered as “drug-free workplace” employers to test for use of controlled substance analogues in the manner required for other substances; from Tenn. Code Ann. § 55-50-405 which requires the Commissioner of Safety to suspend the license of commercial driver convicted of offenses relating to controlled substance analogues; and from Tenn. Code Ann. § 63-1-309 which prohibits a person, from partly or wholly owning a pain

management clinic, if such person was convicted of, pled nolo contendere to, or received deferred adjudication for distributing a controlled substance analogue offense.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$236,100/Incarceration*

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:

Unchanged from the original fiscal note.

Assumptions applied to amendments:

- According to the Department of Correction (DOC), there has been an average of 40 admissions for Schedule I drug offenses in each of the past 10 years. DOC estimates there will be a 10 percent increase (4) in admissions as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on four offenders. Estimate assumes one additional Class D felony offender, two additional Class C felony offenders, and one additional Class B felony offense every other year.
- According to DOC, the average operating cost per offender per day for calendar year 2012 is \$61.36.
- According to DOC, the average post-conviction time served for a Class D felony is 1.86 years (679.37 days) at a cost of \$41,686.14 (\$61.36 x 679.37 days).
- The average post-conviction time served for a Class C felony is 2.98 years (1,088.45 days) at a cost of \$66,787.29 (\$61.36 x 1,088.45 days). The total additional operating cost for two additional offenders is \$133,574.58 (\$66,787.29 x 2).
- The average post-conviction time served for a Class B felony is 5.43 years (1,983.31 days) at a cost of \$121,695.90 (\$61.36 x 1,983.31 days). The annualized cost per offender is \$60,847.95 (0.50 annual number of offenders x \$121,695.90).
- The total additional operating cost is \$236,108.67 (\$41,686.14 + \$133,574.58 + \$60,847.95).
- Any impact on the caseloads of state trial courts can be accommodated within existing resources without an increased appropriation or reduced reversion.
- Removing the references to controlled substance analogues in the enumerated sections will not have a significant fiscal impact on state or local government. There will not be a sufficient reduction in the number of prosecutions for state or local government to experience any significant decrease in revenue or expenditures.

- Based on the Fiscal Review Committee's 2008 study of incarceration costs and fines, collection of fines for felony offenses is negligible. There will not be a significant increase in revenue as a result of this bill.
- Since this bill creates a new offense, no recidivism discount has been included.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise".

Lucian D. Geise, Executive Director

/lsc